Before the
FEDERAL COMMUNICATIONS COMMISSION

In the Matter of	)	
	)	
Developing a Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	
	)	

COMMENTS OF WESTERN WIRELESS CORPORATION AND SUNCOM WIRELESS, INC.

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EXECUTIVE SUMMARY

Inter-carrier compensation reform is one of the most important decisions facing the Commission; it will determine the shape of the telecommunications industry in the coming decades. Decisive action to eliminate existing compensation biases and irrational pricing schemes is long overdue. Plainly speaking, the current system it broke. It inhibits the ability of telecommunications carriers to obtain investment, deploy new technology, and deliver additional consumer value. The Commission should act swiftly to abolish existing distinctions based on technology, political boundaries, and obsolete network architectures, and adopt new rules that anticipate and facilitate changing technologies and services. Carriers should be encouraged to become self-reliant, and to deploy their network in the most economically efficient manner to serve their own customers.

Western Wireless Corporation ("Western Wireless") and SunCom Wireless, Inc. ("Sun-Com") (jointly referred to herein as "Independent Wireless Carriers") submit these comments in response to the Commission's *Further Notice of Proposed Rulemaking.* Independent Wireless Carriers propose that the FCC adopt a simple plan to deal with intercarrier compensation: bill-and-keep for all wholesale carrier relationships.

To the extent that the Commission maintains some forms of monetary compensation, Independent Wireless Carriers requests that the Commission clarify additional standards related to forward-looking costs: f*irst*, end office termination costs should be eliminated as a component of forward looking transport and termination cost analysis; and *second*, the proper allocation of transport in a multi-service environment should be defined to avoid double recovery of costs.

In terms of the physical interconnection of networks, Independent Wireless Carriers urge the Commission to retain the "single point of interconnection" ("POI") rule embodied in the Commission's current rules. Because there is no universal optimal geographic area for all carriers, the LATA is the most suitable geographic point to utilize as a limit for the originating carrier's obligation to deliver traffic to a terminating carrier. Using a common efficient aggregation point—*i.e.*, a designated LATA tandem—as a default mechanism will reduce costs both for carriers operating in rural areas and for small carriers (including new market entrants) with low traffic volumes, as it utilizes more efficient shared facilities for purposes of traffic exchange.

The Commission should allow for a reasonable transition period before bill-and-keep becomes effective. The transition period proposed by Independent Wireless Carriers is four years in length.

Part intercarrier compensation reform must include the elimination of rate-of-return regulation, which serves only to incent local exchange carriers to maximize support by incurring or reporting more costs results in inefficiency and waste. Independent Wireless Carriers urge the Commission to require all incumbent LECs to continue to provide transit services at regulated rates.

The Commission should affirm that separate rating and routing for local numbers – something commonly referred to as "tandem routed local traffic" – is fully consistent with the Commission's rules and principles of local competition, state commission decisions, and court decisions. It is imperative that a local competitor be able to obtain telephone numbers local to the area where it wishes to compete.

At the same time as the Commission moves toward a "unified intercarrier compensation regime," it should also proceed, working with the Federal-State Joint Board, to overhaul high-cost universal service policy in order to produce a consistent, logical, and "unified" system for all carriers serving similarly situated areas. Just as the diverse and irrational "patchwork" of intercarrier compensation systems impedes competition and disserves consumers, the need for unified, consistent rules applies with even greater force to high-cost universal service funding policy. At present, the five separate high-cost funding mechanisms provide different amounts based on a carrier's identity, technology, and history – what a carrier receives depends less on which consumers the carrier serves today, and more on how much the carrier used to receive in excessive access charges. The Commission has already launched a Joint Board proceeding to overhaul the universal service rules in "rural" ILEC areas and to review "how the rural and non-rural high-cost support mechanisms function together."[1] Wireless Carriers urge the Commission and the Joint Board to broaden the scope of this important proceeding to encompass a "comprehensive review of the rural and non-rural funding systems" that will lead to "harmoniz[ing]" the divergent systems.[2]

The time has come to establish a unified, principled, and competitively-neutral system of high-cost support based on forward-looking economic cost. The intercarrier compensation plans advanced by many of the other parties and groups address universal service issues; but most of them are based less on principle than on an attempt to ensure that ILECs are guaranteed "revenue neutrality," at least initially, in the context of access charge reductions.[3] By contrast, the Independent Wireless Carriers' plan offers both intercarrier compensation reforms and universal service reforms that are rooted on principles of economic efficiency and consumer welfare. Our plan would establish a competitively- and technologically-neutral regulatory backdrop to inter-

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1 Federal-State Joint Board on Universal Service, Order, 19 FCC Rcd 11538, ¶ 7 (2004); cf. Public Notice, "Federal-State Joint Board on Universal Service Seeks Comment on Certain of the Commission's Rules Relating to High-Cost Universal Service Support," 19 FCC Rcd 16083, ¶ 6 (Jt. Bd. 2004); see also Western Wireless Comments, CC Docket No. 96-45 (filed Oct. 15, 2004); Western Wireless Reply Comments, CC Docket No. 96-45 (filed Dec. 14, 2004)..

2 See, e.g., Federal-State Joint Board on Universal Service, First Report and Order, 12 FCC Rcd 8776, 8934-35, ¶¶ 292-93 (1997) ("Universal Service First Report & Order"), subsequent history omitted; Federal-State Joint Board on Universal Service, Fourteenth Report and Order, 16 FCC Rcd 11244, 11310-11, ¶¶ 169-73 (2001) ("RTF Order").

3 See, e.g., ICF Plan; EPG Plan; ARIC/FACTS Plan; Home/PBT Plan; NARUC Principles.

modal competition; would promote the interests of consumers (not particular groups of carriers); and would target support so as to avoid undue fund growth. By contrast, the revenue guarantees for ILECs included in some of the other plans have no principled basis, and lead in precisely the wrong direction – toward treating different categories of carriers differently based on their divergent histories and technologies, introducing uneconomic distortions into the competitive marketplace, and exploding the size of the fund.

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Western Wireless Corporation ("Western Wireless") and SunCom Wireless, Inc. (jointly referred to herein as "Independent Wireless Carriers") submit these comments in response to the Commission's *Further Notice of Proposed Rulemaking* in the above-captioned docket (FCC 05-33, released March 3, 2005). Inter-carrier compensation reform is one of the most important decisions facing the Commission; it will determine the shape of the telecommunications industry in the coming decades. Decisive action to eliminate existing compensation biases and irrational pricing schemes is long overdue. The current broken system inhibits the ability of telecommunications carriers to obtain investment, deploy new technology, and deliver additional consumer value. The Commission should act swiftly to abolish existing distinctions based on technology, political boundaries, and obsolete network architectures, and adopt new rules that anticipate and facilitate changing technologies and services.

I. INTRODUCTION

A. Intercarrier Compensation Reform Will Serve The Public Interest

Independent Wireless Carriers strongly support the Commission's efforts to reform the intercarrier compensation system, and endorse the policy goals discussed in paragraphs 31-33 of the *Further Notice*. A sound reform plan will promote the public interest by promoting economic efficiency, competition, and technological innovation, while protecting universal service and reducing bureaucratic overhead. The Commission's policy decisions in this docket should focus on benefits to consumers, not on particular carriers or industry segments. In particular, intercarrier compensation reform should promote sustainable benefits to consumers through efficient competition over the long term, regardless of whether it helps or hurts particular competitors in the short term.

As the Commission found, intercarrier compensation reform should promote economic efficiency and the development of efficient competition. (*Further Notice*, ¶ 31.) The flaws of the existing system in this regard are too well known to require extensive elaboration; they are described in detail at ¶¶ 15-28 of the *Further Notice*, but, in sum, include rates that are unrelated to costs, rates for similar (or identical) services that vary depending on the type of customer purchasing them and the nature of that customer's traffic, and extensive arbitrage resulting from disparities between prices and costs. The Commission should aim to unify the existing disparate compensation schemes, thereby eliminating technological discrimination and opportunities for uneconomic arbitrage, and eliminate above-cost compensation obligations, which uneconomically depress network usage.

Fulfillment of Congress' universal service mandate must be an important consideration in this proceeding. (*Further Notice*, para. 32.) Congress directed that universal service mechanisms should be "*specific*, predictable and sufficient … to preserve and advance universal service." 47 U.S.C. § 254(b)(5) (emphasis supplied). In keeping with this directive, the Commission should seek to tailor universal service mechanisms to the customers and areas where they are needed, and not adopt excessive or wasteful mandates. The Commission should strive to ensure that support goes to those with the most need; to this end, it should seek to target support to consumers in high-cost and low-income locations, rather than carriers that provide service.

Further, it is critical, as the Commission suggested, that any reformed compensation system be competitively and technologically neutral. (*Further Notice*, para. 33.) Historically, the access charge and reciprocal compensation systems have been designed based upon the presumed cost and traffic characteristics of circuit-switched voice traffic. That network model is increasingly becoming obsolete. Although voice services will continue to be a heavy user of the converged networks of the near future, they will certainly not be the only or even predominant use of those networks. Therefore, reform must take into account existing, emerging, and future services, including voice, data, and video, and new network designs, including voice over packet-switched networks. While reform must account for voice services, voice services alone should not dictate the outcome, and certainly the Commission should reject any plan to "fix" voice services that would "break" other network applications in the process.

Similarly, the Commission should reject any attempt to entrench particular groups of carriers or particular technologies through manipulation of compensation rules. Rules that base compensation on the type of technology or the network topology used by a particular carrier will inhibit technological innovation and interfere with the operation of competitive market forces. Carriers should not be given an incentive to retain obsolescent technology in order to qualify for inter-carrier compensation payments. Instead, carriers should be encouraged to become self-reliant, and to deploy their network in the most economically efficient manner to serve their own customers.

This proceeding also presents an opportunity for the FCC to eliminate layers of unnecessary administration both within the regulatory agencies and within and among the carriers that are subjected to it. (*Further Notice*, para. 33.) Although overall FCC policy guidance is needed, there is no need to control every step of the process. The Commission's goals should be to establish clear rules that can be self-executing to the greatest extent possible, which would eliminate vast, unproductive expenditures on regulatory compliance and rate proceedings. The Commission should establish default rules that allow for negotiation between carriers; this will allow market forces to operate while assuring that any carrier that refuses to negotiate will have clear default obligations. It is, however, of the utmost importance that the default rules be unambiguous and simple to implement; otherwise, the advantage of reduced regulatory intervention will be lost as parties dispute their duties and entitlements.

The Commission's primary responsibility in the rulemaking process is to the public interest, not to the interests of those who have proposed particular plans. Although the Commission refers in paragraph 62 of the *Further Notice* to "extensive negotiations" that led to various plans, there is no reason to believe that negotiations necessarily result in a plan that is in the public interest. Rather, negotiations are only likely to produce a plan that serves the interests of those participating in the negotiations, not the interests of the public at large. In fact, *all* of the plans currently before the Commission, including Independent Wireless Carriers, represent the views of telecommunications carriers, not those of users, so none of these plans can be presumed to be in the interests of users *solely* because of the identity of its sponsors or the process by which it was developed.[4] Instead, each plan must be evaluated based on the merits of its substantive proposals. The Commission should adopt a plan that makes sense as a coherent whole, even if it incorporates elements initially proposed by different groups. That said, Independent Wireless Carriers' plan is most consistent with the Commission's policy objectives and is the only plan that remains true to the goal of unified, nondiscriminatory intercarrier compensation reform.

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4 Indeed, most of these plans represent a fairly narrow segment of industry interests. Even the plan most frequently touted as an industry "consensus" was supported only by a minority of the companies that originally participated in the negotiation process.

B. Principles for Reform

Any plan for reform of intercarrier compensation should be based upon the following principles, which in turn summarize and harmonize the policy considerations outlined in the previous section:

1. Unified Compensation

Compensation should not differ due to jurisdiction (inter/intra LATA or inter/intra state), distance (local or long distance, intra or interMTA), or status of the service provider (*e.g.*, ILEC, rural LEC, CLEC, CMRS, VoIP).

2. Originating Network Pays

To the extent there is any compensation obligation at all, it should be imposed solely on the originating carrier, which in turn has the opportunity to recover its costs from its end user. This operational standard would continue to apply to determine compensatory obligations in any carrier-carrier traffic exchange relationship.

3. Symmetrical

This principle insures that one party is not advantaged in a bilateral traffic exchange relationship.

4. Forward looking

Costs must be based on a forward looking additional cost standard. Any other method serves to subsidize less efficient networks and impede motivation to deploy more efficient technologies.

5. Technology-and Competitively-Neutral

Intercarrier compensation reform must be technology and competitively-neutral, meaning all carriers should be treated similarly and no carrier should be eligible for benefits not available to another class of carriers.

II. INDEPENDENT WIRELESS CARRIERS' INTERCARRIER COMPENSATION PLAN

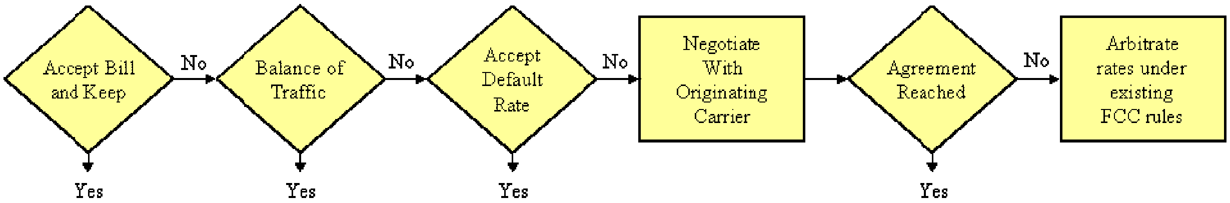
In support of new proposals and positions articulated herein, Independent Wireless Carriers offer their specific proposal for the Commission's consideration, which is attached hereto as Exhibit **1**.[5] The Independent Wireless Carriers' Plan is a comprehensive and workable proposal that meets all of the objectives announced by the Commission in calling for a unified approach to intercarrier compensation issues. A summary of the salient features of Independent Wireless Carriers' proposal follows:

A. Plan Summary

1. Compensation Process

Independent Wireless Carriers propose that the FCC adopt a simple plan to deal with intercarrier compensation during the period of transition to ultimate bill-and-keep for all wholesale carrier relationships. Based on their own experience in dealing with intercarrier compensation, Independent Wireless Carriers believe that their plan is the most workable interim compromise for the entire industry. Independent Wireless Carriers' plan can be briefly summarized by reference to the diagram below, the details of which are fully described in these Comments.

[5] WW initially submitted its proposal to the Commission on November 18, 2004. Exhibit 1 reflects further development of the WW Plan consistent with the version of the plan previously submitted.



Rate: N/A	Rate: N/A	Rate: $.0007		Rate: Negotiated	Rate: TELRIC
Bill and Keep	Bill and Keep	Established Default Rate for all traffic types	Existing Section 252 Negotiation process	Existing Section 252 Approval Prccess	Existing Section 252(d) Rates

2. Bill-and-Keep Rationale

Independent Wireless Carriers believe that the Commission has authority to implement a bill-and-keep intercarrier compensation regime for all traffic that is transported and terminated. The pricing rules in Section 252(d)(2) permit the Commission and/or state commissions to require bill and keep, Section 201 authorizes the FCC to prescribe rules that govern state commissions in arbitrating intercarrier compensation agreements, and Section 332 provides an additional source of authority regarding interconnection with wireless carriers. Independent Wireless Carriers' bill and keep proposal is based on the following principles:

a. Presumption Of Balance Across All Traffic

The reality is that most carriers operate with a balanced traffic profile in the aggregate, that is taking into consideration all traffic originated by and terminated to a carrier's customers.. Although there may be variations in individual bilateral traffic exchange relationships, failing to recognize that the majority of traffic is balanced is a vestige of legal and regulatory action, rather than the result of a competitive market.

b. Incremental Variations In The Balance Of Traffic Should Not Drive Public Policy

Those carriers with unique and sustainable businesses (*i.e.*, those that are not arbitrage-based) that experience an imbalance of traffic can address their traffic exchange needs through cooperative negotiations rather than as the result of additional regulatory action.

c. Peak Hour Is All That Matters In Terms Of Incremental Cost

In the actual world of network operations, the majority of real costs associated with processing traffic are the costs of handling traffic to accommodate peak hour demand. Since peak hour communications serve both the called and calling parties (or the originator and the terminator), by definition, the traffic is of shared value to each parties' customers. A bill-and-keep reciprocal compensation scheme is a simple recognition of this practical reality.

d. Balance Of Traffic Rules Must Apply To Eliminate Unnecessary Diversions

A carrier that is unwilling to accept a bill-and-keep intercarrier compensation regime should be required to prove the existence of an overall traffic imbalance within its network. Then, the carrier should be required to prove that an imbalance exists with respect to traffic exchanged with a particular carrier, before putting that other carrier and the regulatory agency to the expense of conducting a rate investigation.

3. Interim Default Rules Should Apply During The Transition Period

Default rules should apply to streamline the development of intercarrier compensation relationships during the period of transition to bill-and-keep. Independent Wireless Carriers have proposed a default rate that is consistent with forward looking costs to terminate telecommunications traffic. This rate should provide sufficient compensation for most parties to resolve compensation matters while providing sufficient incentive for carriers to move to efficient network configurations. At the very least, Independent Wireless Carriers' default rate proposals will not impede that process.

4. Negotiations Should Be Required, And Existing Arbitration Rules Should Be Retained In The Event That Negotiations Fail

Existing rules for negotiation work effectively. The intercarrier compensation regime should continue to rely on bilateral negotiations between carriers to resolve traffic exchange and compensation disputes that cannot be informally addressed. In the event that such resolution is not possible, however, existing arbitration rules established pursuant to the Section 251/252 process should be retained, including recognition of the delegated authority for states to act as the arbitrator of intercarrier compensation disputes.

5. Forward-Looking Cost-Based Rates Should Be Established

Independent Wireless Carriers recommend that the Commission clarify additional standards related to forward-looking costs derived through arbitration. Establishment of clear and simple requirements subject to Section 252(i)'s nondiscrimination provisions would reduce contention over the appropriate methodology to be applied. Independent Wireless Carriers propose two simple standards, both of which are consistent with sound economic policy, and would significantly simplify cost proceedings. *First*, end office termination costs should be eliminated as a component of forward looking transport and termination cost analysis. The Commission and several states have already arbitrated proceedings that performed this analysis and reached the same conclusion: end office switching costs (or their equivalent) are not usage-sensitive.[6] *Second,* the proper allocation of transport in a multi-service environment should be defined consistent with the guidance provided by Independent Wireless Carriers.

6. All Intercarrier Compensation Agreements Must Be Filed And Offered To Other Carriers For Opt-In Pursuant To Section 252(i)

Section 252(i) requires that specified agreements, including those related to reciprocal compensation, must be made available to other telecommunications carriers upon the same terms and conditions as those provided in the agreement. Interconnection agreements must be filed with state commissions for review and approval under Section 252(e). Failure to adhere to such a requirement would give rise to the potential for unreasonable discrimination between service providers and carriers who are not parties to the particular agreement at issue, which would violate the Act.

7. Elimination Of Industry Costs

Perhaps the most notable and obvious long term implication of moving away from the existing multiple and duplicative forms of carrier access and reciprocal compensation billing will be the industry's ability to forego hundreds of millions (perhaps billions) of dollars currently expended on billing systems and administration costs that are of no direct benefit to consumers. The extensive resources devoted to supporting the existing defective intercarrier compensation regime consumes excessive amounts of financial and

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6 *Illinois Commerce Commission On Its Own Motion -vs- Illinois Bell Telephone Company*, Investigation into Tariff Providing Unbundled Local Switching with Shared Transport, Case 00-0700, July 10, 2002, pages 4-6; Virginia Arbitration Order, *In the Matter of In the Matter of Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration (CC Docket No. 00-218) In the Matter of Petition of AT&T Communications of Virginia Inc., Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia Corporation Commission Regarding Interconnection Disputes With Verizon Virginia Inc. CC Docket No. 00-218 (CC Docket No. 00-251), Memorandum Opinion and Order, August 28, 2003. (FCC's Virginia Arbitration Order)* at p. 458-459 and 463-465; *In the Matter of the Determination of the Cost of the Unbundled Loop of Qwest Corporation*, Public Service Commission of Utah, Docket No. 01 049 85, Report and Order, May 5, 2003, pages 16-18.

management resources that can be redirected to more competitive market and consumer-based interests. Independent Wireless Carriers' plan advances the public interest by promoting a simplified intercarrier compensation regime that focuses on economic efficiency and the development of competition.

B. The Independent Wireless Carriers' Plan Is Superior To Other Proposals

Independent Wireless Carriers have reviewed and evaluated the various industry group proposals that are before the Commission in this proceeding, and submits that their plan should be adopted in lieu of the other proposals. Independent Wireless Carriers have generally addressed the competing plans below and indicated their primary response to each of the proposed alternatives to their plan. Exhibit 2 also provides a comparison of key components of each plan.

1. Cellular Telecommunications & Internet Association ("CTIA") Proposal

Independent Wireless Carriers agree with CTIA that a bill-and-keep regime is the appropriate solution to reform the current faulty intercarrier compensation regime. Independent Wireless Carriers also support CTIA's position that reforms implemented by the Commission should benefit consumers but not guarantee revenue neutrality for incumbent LECs. In addition, Independent Wireless Carriers agree with CTIA's proposal to simplify intercarrier compensation and universal service rules to the benefit of the industry as a whole, in order to reduce the costs of compliance, and in furtherance of the public interest.

2. Intercarrier Compensation Forum ("ICF"), Expanded Portland Group ("EPG"), and Alliance for Rational Intercarrier Compensation ("ARIC") Proposals

Although we support the ICF's ultimate goal of a bill-and-keep intercarrier compensation regime, Independent Wireless Carriers primary area of disagreement with the ICF proposal is that it is overly complex and counterproductive to evolving networks, and it maintains arbitrary distinctions between carrier types. In its focus on embedded carrier traffic definitions and embedded network differences, the ICF proposal attempts to accomplish objectives that have no place in a competitive and technology-neutral regime such as that proposed by Independent Wireless Carriers. The ICF distinction of "hierarchical" and "non-hierarchical" networks is unnecessary and technologically outdated. The proposed ICF "carve out" treatment for rural LECs is clearly discriminatory, as it attempts to fence off substantial amounts of money from competition by establishing a sizeable new fund for rural ILECs that is not portable to wireless competitors operating in the same areas.

The ARIC and EPG proposals suffer from some of the same infirmities as the ICF plan, including limiting certain universal service funds for wireline carriers only. Independent Wireless Carriers similarly disagree with those aspects of the ICF, EGP and ARIC plans that purport to achieve "revenue neutrality" for rural ILECs by replacing lost access revenues with new universal service dollars. In general, these proposals are heavily weighted toward wireline interests. In marked contrast, the Independent Wireless Carriers' plan targets universal service dollars to consumers in the most rural, high cost areas. Finally, the ICF, EGP and ARIC plans continue to target universal dollars to the least efficient ILECs, regardless of how costly their areas really are to serve and regardless of the extent to which consumers in those areas need to be subsidized.

3. National Association of Regulatory Utility Commissioners ("NARUC") Proposal

Certain aspects of the NARUC plan represent a balanced approach to intercarrier compensation reform, but NARUC's proposed "Access Charge Transition Fund" is clearly discriminatory and contrary to the public interest. Any universal service funding mechanism that is not available to all eligible telecommunications carriers ("ETCs") serving a rural area is unlawful. Further, NARUC's proposed tiered default termination rate structure is arbitrary, unsupported by economic rationale, derived from an embedded LEC network perspective, and violates NARUC's own stated principle of achieving forward looking economic costs. Perhaps most eggregious is NARUC's proposal to award additional terminating transport costs to rural LECs (CRTCs).

4. Cost-Based Intercarrier Compensation Coalition ("CBICC"), Home Telephone Company and PBT Telecom ("Home/PBT"), and National Association of State Utility Consumer Advocates ("NASUCA") Proposals

The CBICC, Home/PBT and NASUCA proposals do not suffer the same infirmities of the ICF, EPG, ARIC, and NARUC plans, but they do not go far enough in reforming the current intercarrier compensation regimes, leaving in place many of the vestiges of the current broken system. NASUCA's proposal to retain the current universal service mechanisms and SLC rate caps can not be justified. Independent wireless carriers concur, however, with CBICC on the avoidance of distinctions between carriers based on the hierarchical/non-hierarchical concept proposed by ICF.

III. LEGAL ISSUES

A. The "Additional Cost" Standard of Section 252(d)(2) Permits Bill-and-Keep Arrangements

1. Bill-and-Keep Is Explicitly Authorized By The Act

Under Section 252(d)(2)(A), the terms for reciprocal compensation cannot be considered to be just and reasonable unless "such terms and conditions provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination."[7] However, Section 252(d)(2)(B) states that this requirement shall not be construed "to preclude arrangements that afford the mutual recovery of costs through the offsetting of reciprocal obligations, including arrangements that waive mutual recovery (*such as bill and keep arrangements*)."[8]

The fact that the Act explicitly permits bill-and-keep arrangements was recognized by the Commission in the NPRM, where it reiterated its previous conclusion that such arrangements are permissible, provided that the traffic exchanged between interconnecting carriers is relatively balanced,[9] and sought comment on whether the statute can read as permitting bill-and-keep for all traffic subject to Section 251(b)(5), even if it is not balanced.[10] Therefore, because the statute explicitly permits bill-and-keep arrangements, the Commission can be satisfied that rules imposing a bill-and-keep mechanism as the ultimate solution to intercarrier compensation will be consistent with the statute.

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7 47 U.S.C. § 252(d)(2)(A).

8 47 U.S.C. § 252(d)(2)(B) (emphasis added).

9 Further Notice, ¶ 74, n. 246, citing Local Competition First Order and Report, 11 FCC Rcd at 16054-55, ¶¶ 111-12.

10 Further Notice, ¶ 74, n. 246, citing Intercarrier Compensation NPRM, 16 FCC Rcd at 9635-37, 9644-45, ¶¶ 73-77, 97.

2. Even If The Act Did Not Permit Bill-And-Keep, The Commission Has Authority To Forbear From Enforcing The "Additional Cost" Standard Of Section 252(d)(2)

Even if Section 252(d)(2) does not permit mandatory bill-and-keep, which is not the case, the Commission could adopt such a regime by forbearing from enforcement of the "additional cost" standard of Section 252(d)(2) [11] pursuant to Section 10 of the Act. Section 10 empowers the Commission to forebear from applying any regulation or provision of the Act after application of a three-part test.[12]

Because bill-and-keep clearly will promote competition and universal service and will advance the public interest , the Commission would have authority to forbear from enforcing the "additional cost" standard even if a bill-and-keep regime was not permitted under Section 252(d)(2). The Commission could therefore exercise its forbearance authority in order to impose a bill-and-keep regime even if it was not explicitly authorized to do pursuant to the statute.

3. If It Decides Not To Adopt Bill-And-Keep, The Commission Should Not Base The "Additional Cost" Standard On TELRIC

In the event that the Commission does not adopt the Independent Wireless Carriers' bill-and-keep proposal and continues to ultimately require some payment of compensation, the "additional cost" standard should not be based on TELRIC (which includes common costs and other non-traffic-sensitive compo-

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11 See 47 U S.C. § 252(d)(2)(A) (calling party's LEC must compensate the called party's LEC for the additional costs associated with transporting a call subject to Section 251(b)(5) from the carriers' interconnection point to the called party's end office, and for the additional costs of terminating the call to the called party).

12 47 U.S.C. § 160(a) (Commission may forebear from applying any regulation or provision of the Act if it determines that (1) enforcement is not necessary to ensure that charges, practices, classifications, or regulations by are just and reasonable and are not unjustly or unreasonably discriminatory; (2) enforcement is not necessary for the protection of consumers; and (3) forbearance is consistent with the public interest).

nents). Instead, any "additional cost" authorized by the Commission should be premised strictly on an analysis of incremental traffic-sensitive switching and transport costs.

As the Commission noted in the *Further Notice*, the "additional cost" standard is not the same as the statutory pricing standard for unbundled network elements ("UNEs") set forth in the Act.[13] In fact, the Commission acknowledged that TELRIC pricing is not necessarily consistent with the "additional cost" standard.[14] This is because TELRIC measures the *average* cost of providing a function, a standard which may differ from calculating the *additional* cost of providing that function.[15] Independent Wireless Carriers agree with this reasoning, as adoption of TELRIC pricing would result in the inclusion of common costs and other non-traffic sensitive components that are incidental to any additional cost being evaluated by the Commission.

Independent Wireless Carriers urge the Commission to confine its analysis of "additional cost" only to the incremental traffic-sensitive switching and transport costs actually incurred by the parties exchanging traffic for purposes of intercarrier compensation. Establishment of any additional costs should be based on a forward-looking standard that does not subsidize less efficient networks, impede carriers' motivation to deploy more efficient technologies, or permit the recovery of embedded common costs and non traffic-sensitive components.

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13 Further Notice, ¶ 71.

14 Further Notice, ¶ 71.

15 Further Notice, ¶ 71 (emphasis in original).

B. The Commission Has Authority To Preempt State Regulation of Intrastate Access Charges

In the *Further Notice,* the Commission requests comment on whether it may preempt state regulation of intrastate access charges.[16] Because the Commission has such authority pursuant to the Act and under United States Supreme Court precedent, it is empowered to implement a regime that supersedes intrastate access charge mechanisms.

Despite the historical interstate/intrastate dichotomy under which regulation of intrastate access charges would be within the exclusive jurisdiction of state commissions, the Commission has interpreted Section 251(b)(5) as being applicable to *all* telecommunications traffic except as provided in Section 251(g), which preserved existing (pre-1996) compensation obligations.[17]

Section 251(g), however, by its clear terms, is a transitional provision that applies only until the Commission adopts new rules "superseding" existing requirements. Therefore, the Commission plainly has authority to adopt new compensation provisions applying to any form of telecommunications traffic, including intrastate access traffic. This conclusion is consistent with the Supreme Court's holding in *AT&T v. Iowa Utilities Board*.[18] In that case, the Supreme Court found that Section 251 is not subject to the traditional federal/state jurisdictional allocation under Section 2(b) when it stated that "the 1996 Act clearly applies to intrastate matters."[19]

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16 Further Notice, ¶ 78.

17 See Intercarrier Compensation for ISP-Bound Traffic, Order on Remand, 11 FCC Rcd 9151, ¶ 34 (2001). See 47 U.S.C. § 251(g) (providing for continued enforcement of exchange access and interconnection agreements…until such restrictions and obligations are explicitly superseded by regulations prescribed by the Commission after the date of such enactment).

18 525 U.S. 366, 119 S.Ct. 721 (1999).

19 119 S.Ct. 721 at 725.

C. A Bill-and-Keep Plan Would Promote The Rate Averaging and Geographic Integration Provisions Of Section 254(g)

Section 254(g) requires that providers of interexchange telecommunications services: (1) charge rates in rural and high cost areas that are no higher than the rates charged in urban areas (*i.e.* rate integration); and (2) charge rates in each state that are no higher than those in any other state (*i.e.* geographic deaveraging).[20] These requirements are intended to benefit rural areas both by providing access to a nationwide telecommunications network at rates that do not reflect the disproportionate burdens that may be associated with recovery of common line costs in rural areas, and by ensuring that rural customers share in lower prices resulting from widespread interexchange competition.[21]

A uniform nationwide bill-and-keep plan such as that proposed by Independent Wireless Carriers would comport with these requirements by eliminating existing artificial cost differences between service to urban and rural areas, and between states, thereby promoting – better than any alternative – the rate policies set forth in Section 254(g). When all carriers are required to adhere to a uniform intercarrier compensation regime that is competitively and technology neutral, the concerns embodied in Section 254(g) will diminish. Because adoption of Independent Wireless Carriers' Plan would result in intercarrier compensation that does not differ based on jurisdiction, distance, or the status of the service provider, bill-and-keep represents the best alternative before the Commission when the requirements of Section 254(g) are considered.

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20 47 U.S.C. § 254 (g).

21 Further Notice, ¶ 84-85.

IV. NETWORK INTERCONNECTION ISSUES

A. The Commission Must Not Modify the "Single Point of Interconnection" Rule

Independent Wireless Carriers urge the Commission to retain the "single point of interconnection" ("POI") rule embodied in the Commission's current rules, which is, as the Commission noted, consistent with the position of most CMRS providers and CLECs.[22] This standard is essential to prevent unnecessary and uneconomic duplication of existing networks. If new entrants had to connect to every network node, or even to every tandem switch operated by existing carriers, the Commission would force inefficient investment in duplicative facilities that would essentially replicate the existing ILEC network. This would in turn create unnecessary barriers to entry. For these reasons, the proposals by ILECs to require competitive entrants to establish a POI in each local calling area or pay the transport costs to reach a POI outside the local calling area[23] should not be adopted.

B. The Commission Should Adopt a Feasible and Efficient Edge Definition

Establishing a demarcation point for the purposes of traffic exchange responsibility should take into consideration a range of technical feasibility points, the validity of efficient indirect traffic exchange, and efficient defaults when relatively small traffic volumes are exchanged between two carriers.

Independent Wireless Carriers propose a simple solution for this issue. The originating carrier is technically and financially responsible for delivering traffic to the terminating carrier within a defined geographic area. Because there is no universal optimal geographic area for all carriers, the LATA is the most suitable geographic point to utilize as a limit for the originating

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22 See Further Notice, ¶¶ 87, 89.

23 See Further Notice, ¶¶ 90.

carrier's obligation to deliver traffic to a terminating carrier. Any other geographic point will result in expensive network reconfigurations for some carriers, which will likely never result in improved efficiency, and which will therefore be detrimental to the public interest. Unless there is mutual agreement between originating and terminating carriers to establish alternative traffic exchange (*e.g.*, direct connections), Independent Wireless Carriers' proposal specifies that the LATA tandem should be designated as the default point of interconnection for all carriers.

1. A Default Traffic Exchange Relationship Should Be Limited To One Network Edge Per LATA

Independent Wireless Carriers propose that the Commission require that a non-negotiated bilateral default traffic exchange relationship be limited to one network edge per LATA. Establishment of a designated LATA tandem as the default point of interconnection eliminates issues deriving from inefficiently sized networks and provides for consistent network edge delivery obligations for all carriers. This approach defines default traffic exchange by region, not by carrier type (unlike the ICF proposal), immediately resolves concerns related to responsibility for traffic pick up and delivery, an advantage which should provide comfort for many carriers and motivate others to seek an alternative negotiated solution with one or more specific carriers.

Using a common efficient aggregation point—*i.e.*, a designated LATA tandem—as a default mechanism will reduce costs both for carriers operating in rural areas and for small carriers (including new market entrants) with low traffic volumes, as it utilizes more efficient shared facilities for purposes of traffic exchange. This proposal has other advantages as well. The use of a designated LATA tandem as a common default mechanism also serves to facilitate entry into new markets through the establishment of a single POI in a service area. In addition, the use of a designated LATA tandem advances the use of shared transport facilities, which are widely used by carriers today as an efficient traffic aggregation method, avoids the potentially massive costs for extensive new dedicated facilities, and reduces the need for policing action relative to network edge issues.[24] The burden of determining what network and what legal entity should be obligated to establish a POI is an unnecessary regulatory and operational burden. With a default LATA POI, market dynamics will drive carriers to establish alternatives when they become economically efficient.

The efficiency of tandem architectures for exchanging relatively small traffic volumes has long been recognized. Rural LECs have depended on tandem switching for efficient aggregation and distribution of traffic. However, the current carrier compensation rules have motivated some LECs to establish less efficient routing and have resulted in revenue arbitrage. Other LECs have chosen to replace RBOC provided tandem solutions with their own consortium networks. In fact, these LEC consortium networks include many single exchange telcos when it would be highly inefficient to exchange traffic directly with such telcos if direct 'edge' connections were required. Unfortunately, some of these LEC-owned networks (*e.g.* SDN and Aurora) appear to limit use of the networks to toll access only and prohibit CMRS carriers and others from using these networks for the exchange of local traffic subject to reciprocal compensation. Their objectives are clear: force carriers to directly interconnect with each LEC and drive up a competitive carrier's cost of service.

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[24] Policing what constitutes a network edge is not an effective use of either regulator or industry resources. Carriers today have multiple affiliations and operate in multiple telecomnunications domains. For example, carriers may have LEC, wireless, CLEC, ISP, and IXC networks overlayed and integrated in the same market area. Other carriers have affiliated legal entities that may operate using a common network. The implementation of rules to deal with the legal affiliate parameters is not only unproductive, but could result in arbitrage. All of these undesirable consequences can be avoided by identifying a default edge and letting carriers negotiate economically efficient alternatives if they choose to.

C. The Commission Should Abolish Charges For Transport From A POI To The Point Of "Termination" Of A Call

Charges for transport from a POI to the point of "termination" of a call are inherently subject to manipulation based on the location of a carrier's switches. A call does not "terminate" at the end user's premises, but rather at the end office-equivalent switch that serves the end user. Since a carrier can put this switch anywhere, it can increase or decrease its transport charges at will. The ability to engage in such manipulation is contrary to the objectives set forth by the Commission in reforming the intercarrier compensation regime, and Independent Wireless Carriers urge the Commission to prohibit such charges.

V. COST RECOVERY ISSUES

A. End Users Should Ultimately Bear The Costs Of Their Connections To The Network

A bill-and-keep regime may eliminate a source of revenues for some carriers. To the extent a carrier incurs cost for exchanging traffic, it will have to recover these costs from another sources. Ultimately, end-users should bear the cost of their connections to the network, except where specific public policies require the continuation of universal service subsidies. These subsidies should be specifically targeted in accordance with Section 254, as addressed herin.

B. Compensation Rules Should Be Simplified

Dramatic steps can be taken to simplify intercarrier compensation by removing historical and, increasingly meaningless, distinctions of traffic. Many of these distinctions only exist to serve regulatory processes that were initiated for the purposes of furthering prior goals of the Commission, such as demonopolization and/or cross subsidization. This proposal offers several suggestions for the simplification of intercarrier compensation rules, which are summarized below.

1. Inter/Intra State And Inter/Intra LATA Distinctions Should Be Removed.

The distinctions between inter and intra state, and inter and intra LATA, exist only to support existing regulatory processes, not to promote the public interest or to advance customers interests. Because these artificial traffic distinctions have little or no sustaining value, no inherent technical or cost basis, and no consumer value, they should be eliminated.

2. The Inter/Intra MTA Distinction Should Be Eliminated (If Access Charges Are Eliminated)

The existing inter/intra MTA distinction is ultimately no less arbitrary than a LATA or state distinction. In fact, the industry has not widely utilized this traffic definition and has not developed a way to measure this distinction for real time or post-call record processing.

3. Remove Local/Toll Distinction On Carrier Settlements.

Removal of the local/toll distinction on carrier settlements will eliminate arbitrage opportunities and the possibility of litigation. It would enable the use of more efficient interconnection trunks (*e.g.*, by eliminating any separation between local, EAS and access connections), and would assist in alleviating the contentious "virtual NXX" disputes between CMRS providers and LECs. Local calling area boundaries can be adjusted to address any competitive regulatory issues that might arise from the elimination of this unnecessary distinction.

4. Carrier Classifications Should Be Eliminated

Because there are no technical or economic reasons to distinguish intercarrier compensation by the type of carrier or by whether the traffic exchanged is originating or terminating, Independent Wireless Carriers believe that existing carrier classifications be eliminated for the purposes of intercarrier compensation.

5. An Incentive System Should Be Employed To Assure Compliance

The Commission should assert its authority in dealing with intercarrier compensation reform and reinforce that authority with powerful incentives for all carriers in all jurisdictions to comply with the Commission's reforms. The receipt of universal service funds should be contingent upon a receiving carrier's compliance with Commission reform requirements and those competitive reforms adopted by relevant state commissions.

C. States Should Be Permitted To Deregulate

State commissions should be encouraged to implement reforms in the areas of local rates and equal access requirements in connection with reformulation of the existing intercarrier compensation regime. Local rates should reflect a competitive market, where each carrier is expected to be self reliant and cross-subsidies should be eliminated. Any other solution is unsustainable if the deficiencies in the current regime are to be rectified.

With regard to equal access requirements, the bifurcation of calling scope and the related transport obligation have outlived their usefulness and continue to create anomalies of service that have lost their public benefit. The reality of today's environment is that RBOCs already own or are major IXCs, rural LECs already retail their own long-distance service and control a high percentage of their customer base, CMRS providers are not obligated to provide equal access and therefore do not do so, and CLECs generally avoid equal access issues as much as possible. Equal access requirements should therefore be eliminated, although any communications network provider should be able to offer equal access if it so chooses.

D. Commission Oversight Over Transit Services Should be Maintained

The Commission should maintain continued oversight over the provision of LATA transit tandem services. Residual market power and inherent economic efficiencies have limited the development of competitive transit voice networks in most markets. Since these LATA transit services are of critical importance in linking carriers in an economically efficient manner, their availability at a reasonable cost must be ensured for the foreseeable future.

VI. IMPLEMENTATION ISSUES

A. A Reasonable Transition Period Should Be Allowed Before Bill-and-Keep Is Implemented

A bill-and-keep regime should be adopted by the Commission as soon as possible and with a sense of urgency that accounts for the fact that such reform is long overdue. The Commission should, however, allow for a reasonable transition period before bill-and-keep becomes effective. Such a period of transition is necessary to enable carriers to reconfigure their trunk connections, interconnection facilities, and billing systems. Further, while carriers in principle should recover their economically justified costs from their end users, an immediate implementation of that policy may not be in the public interest. The transition period proposed by Independent Wireless Carriers is four years in length, an amount of time which Independent Wireless Carriers believe to be reasonable and sufficient (in contrast to the eight-year ICF proposal).[25]

Independent Wireless Carriers' proposal makes the following specific suggestions with regard to the transition for various aspects of intercarrier compensation reform:

1. Reciprocal Compensation And Access Charge Transition

Any negotiated agreement should take precedence over reciprocal compensation-reform, and implementation of new standards should occur as a result of the termination clauses contained in existing agreements. For circumstances that are not governed by a negotiated agreement at the time of Commission adoption of its rules, the new intercarrier compensation

[25] Although Independent Wireless Carriers generally believe that all types of carriers should be subject to the same transition period, an exception may be warranted for small ILECs (those with less than 20,000 access lines in affiliated interests) whereby the transit period and annual adjustment factors would be extended by approximately two years.

plan should be in effect. All intercarrier compensation arrangements should be converted to bill-and-keep arrangements no later than in four years after Commission adoption of the new regime.

Access rates as a component of intercarrier compensation should be reduced immediately. Further reductions should be made each year until, at the end of the transition plan, all carriers exchange traffic on a bill-and-keep basis. To the extent carriers already maintain rates that are lower than the maximum allowable transition plan rates, such rates should remain in effect until superceded by the transition plan rate.

Transition to bill-and-keep should proceed as follows:

* Over a 4 year period, the maximum level of per-minute intercarrier compensation rates subject to interconnection agreements declines to zero (bill-and-keep).
  - In Year 1, the maximum intercarrier compensation rate for each ILEC is that at which the ILEC would receive 80% of the interstate + intrastate carrier access revenues it received in Year 0; in Year 2, 60%; in Year 3, 40%; in Year 4, 20%, and beginning after the end of the four-year transition, zero.
  - For the smallest rural ILECs (those with fewer than 30,000 lines in a state and fewer than 100,000 nationwide), these reductions would proceed on a slower time frame (e.g., six years instead of four).
  - Reductions would be targeted as follows:
    - ⇒ Beginning in Year 1, no non-access charge rate may exceed $0.0015 per minute.
    - ⇒ Subject to the preceding bullet point, rate reductions would be targeted so that the highest per-minute rates (typically intrastate access) come down first until they are at parity with interstate access rate levels.
* ILECs would be allowed to increase their subscriber line charges (“SLCs”) over the four-year transition period, as proposed by the ICF for non-rural ILECs, except there would be no difference between the SLC caps for rural and non-rural ILECs.
  - Beginning in Year 1, ILECs’ marketing materials (including pricing) must not break out the SLC as a regulatorily mandated add-on charge; the SLC must be marketed as part of the basic price of service.
  - SLCs will be completely deregulated at the end of the four-year transition period for any ILEC that can prove to the satisfaction of the FCC that it is subject to

competition – *i.e.*, at least one facilities-based carrier is available to 50% of customers in the area, and at least 25% of customers have chosen to take service from such competing facilities-based carrier(s). If the ILEC is receiving high-cost funds, then the competing facilities-based carrier must also have ETC status and be receiving high-cost funds.

2. Universal Service Transition

Independent Wireless Carriers' plan provides for a four-year transition period from today's funding structure and funding levels to the new universal service funding mechanism. To ease the transition to a new universal service funding regime, existing funding mechanisms would be modified via a graduated five-step transition period, in accordance with the following plan:

* Replace all existing USF mechanisms with a unified high-cost universal service mechanism that would be fully portable to all designated ETCs operating in a geographic area, and that would calculate support for all eligible carriers based on the forward-looking economic costs of providing the supported universal service in an area using the least-cost technology.

  > If needed to facilitate intrastate rate rebalancing, additional portable funds could be disbursed in states that have statewide average forward-looking costs significantly greater than the national average (like today's High Cost Model-based support fund).

* At the end of a four-year transition period (six years for areas served by small rural ILECs), the overall size of the fund would be "right-sized," *i.e.*, targeted to be no greater than the size of today's high-cost support funds, and possibly smaller, as long as sufficient support is provided to the highest-cost areas. Individual carriers may receive more or less under the new rules than they received in the past.

* To ease the transition for rural ILECs and other ETCs in their service areas, the existing USF funds would be transitioned out, and the new funds would be transitioned in, in graduated "steps" over a four-year transition period.

  > This transition process would be extended to six years for the smallest rural ILECs (those with fewer than 30,000 lines in a state and fewer than 100,000 nationwide) and other ETCs in their service areas.

  > In addition, in extraordinary circumstances, if an incumbent or competitive ETC can prove to the FCC that it faces extreme hardships and additional support is needed to avoid increasing end-user rates to "unaffordable" levels, additional

"safety net" support should be available to all ETCs in the specified geographic area for a limited period of time.

3. Rate-Of-Return Regulation

Independent Wireless Carriers believe that local retail rate regulation (or deregulation) should be left to state commissions. Retail rate flexibility should be granted to ILECs that face competition. State commissions will have to act quickly to ensure that regulated carriers under their purview are not disadvantaged by inaction during the intercarrier compensation regime reform transition period.

Rate of return regulation should be abolished, as any plan that incents ILECs to maximize support by incurring or reporting more costs results in inefficiency and waste. Any region where rate of return regulation exists should be reviewed in order to best determine how to encourage competitive efforts to eliminate the need for rate of return regulation (*e.g.*, implementation of reverse auctions for carrier of last resort). At the very least, ILECs should be allowed to increase their local rates to a benchmark level. The objective should be complete deregulation at the end of a transition period for any ILEC that can prove it is subject to effective competition (*i.e.*, at least one facilities based carrier available to 50% of customers and at least 25% of customers have chosen to take competitive service).[26]

ILECs should be required to identify both existing SLCs and any new rate increases as part of the basic price of local service. Carriers should not be permitted to continue to obfuscate the truth about local rates, as ending the ILECs' ability to take advantage of consumers by mischaracterizing SLCs as a regulatory mandate should be an objective of intercarrier compensation reform.

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26 In addition, if an ILEC is a universal service high-cost cost fund recipient, the competing facilities-based carrier must also have ETC status and be receiving high-cost funds.

VII. TRANSIT SERVICE ISSUES

The Commission seeks comment on a LEC's obligation to provide transit service to exchange traffic between two carriers that are not directly interconnected. The Commission recognizes that no rule is currently in place, and that incumbent LEC transit service is crucial to the exchange of CLEC and CMRS traffic.[27] Independent Wireless Carriers urge the Commission to require all incumbent LECs that operate tandem switches to provide transit services at regulated rates to any carrier that is interconnected with that tandem.

Independent Wireless Carriers' position is supported by Sections 201(a) and 251(a)(1)[28] and by sound practical and public policy considerations. In fact, the lower volume of traffic that Independent Wireless Carriers exchange with some of the smaller LECs does not warrant direct interconnection arrangements, and it is imperative for the company to obtain indirect interconnection. Without the guaranteed availability of transit service, Independent Wireless Carriers would be faced with the possibility of having no efficient means of traffic routing in instances where the company relies on indirect interconnection, which is wasteful and contrary to the public interest. The Commission should reject incumbent LEC claims that transit service offerings should be voluntary, a result that would be contrary to the Commission's goal of promoting competition and efficient interconnection. Nonetheless, the Commission could consider an exception to the general rule that LECs are obligated by the Act to provide transit service to exchange traffic between two carriers that are not directly interconnected if sufficient competition exists in providing transit service.

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[27] Further Notice, ¶ 120-121.

[28] 47 U.S.C. § 201(a) (authorizing Commission to require carriers to establish through routes); 47 U.S.C. § 251(A)(1) (requiring both direct and indirect interconnection).

VIII. CMRS ISSUES

A. A Nationwide Bill-and-Keep Regime Will Make It Unnecessary For The Commission To Address The IntraMTA Rule

Should the Commission implement a nationwide bill-and-keep regime, it will not be necessary to address the continued viability of the intraMTA rule as described in the *Further Notice.*[29] Because one of the central principles of Independent Wireless Carriers' proposal is that intercarrier compensation rate levels and rate structures should be unified in lieu of differentiating between jurisdiction (interstate vs. interstate), distance (long vs. long-distance, intraMTA vs. interMTA), or provider status (non-rural ILEC, rural ILEC, CLEC, CMRS, or VOIP), adoption of Independent Wireless Carriers' plan will render determination of the intraMTA issue moot for compensation purposes.

If the Commission elects not to adopt a bill-and-keep regime and decides to consider the substantive issue of whether to modify the intraMTA rule, Independent Wireless Carriers urge the Commission to retain the interMTA rule in its present form. The purpose of the rule is to distinguish access traffic from Section 251(b)(5) CMRS traffic subject to reciprocal compensation.[30] The Commission should clarify that CMRS traffic that originates and terminates within an MTA – even traffic that is passed through a transiting carrier – is subject to reciprocal compensation rather than access charges.

Instead of modifying the rule, the Commission should reaffirm that existing rules prevent rural ILECs from improperly attempting to impose access charges or similar rates on intraMTA

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[29] Further Notice at ¶ 135.

[30] See Further Notice at ¶ 135.

traffic that is subject to reciprocal compensation. This result is consistent with the Commission's prior determination that the MTA is the local calling area for landline-to-CMRS traffic.[31] It is similarly the only equitable conclusion, due to the fact that CMRS providers do not collect access payments from other carriers for any traffic that the CMRS provider terminates.

B. The Commission Should Affirm A Carrier's Right To Establish Separate Rating and Routing Points For Its Telephone Numbers.

The Commission should affirm that separate rating and routing for local numbers – something commonly referred to as "tandem routed local traffic" – is fully consistent with the Commission's Rules and principles of local competition. It is imperative that a local competitor be able to obtain telephone numbers local to the area where it wishes to compete. Fortunately, it is undisputed that Independent Wireless Carriers are entitled to obtain telephone numbers in areas where it is licensed to provide service. See Atlas Tel. Co. v. Corp. Comm'n of Okla., 309 F. Supp. 2d 1313, 1317 (W.D. Okla. 2004) ("Atlas II"), aff'd 400 F.3d 1256 (10th Cir. 2005); Mountain Communications, Inc. v. FCC, 355 F.3d 644, 648 (D.C. Cir. 2004) ("Neither in *TSR* nor in this case has the [FCC] suggested, or has Qwest claimed, that Qwest had any right to refuse to allow Mountain to obtain paging numbers associated with each local calling area.").

To ensure that competitors' telephone numbers would be treated as local, Congress required LECs to provide "local dialing parity" for telephone numbers of competing carriers. 47 U.S.C. § 251(b)(3). The Commission implemented this local dialing parity obligation in 1996, and made clear that a CMRS provider's telephone numbers are entitled to such non-discriminatory treatment:

> [P]ursuant to section 251(b)(3), a LEC is required to permit telephone exchange service customers within a defined local calling area to dial the same number of

[31] See ISP Remand Order at ¶ XX.

> digits to make a local telephone call, notwithstanding the identity of a customer's or the called party's local telephone service provider. . . . To the extent that a CMRS provider offers telephone exchange service, such a provider is entitled to receive the benefits of local dialing parity. . . . [W]e find that under section 251(b)(3) each LEC must ensure that its customers within a defined local calling area be able to dial the same number of digits to make a local telephone call notwithstanding the identity of the calling party's or called party's local telephone service provider.

In The Matters Of Implementation Of The Local Competition Provisions Of The Telecommunications Act Of 1996, CC Docket No. 96-98, Second Report and Order and Memorandum Opinion and Order, 11 FCC Rcd. 19392, FCC 96-333, ¶¶ 64-68 (rel. Aug. 8, 1996) (emphasis added). As a result, once Independent Wireless Carriers obtain local numbers and rate them to a LEC's local calling area, the LEC:

> … shall permit telephone exchange service customers within a local calling area to dial the same number of digits to make a local telephone call notwithstanding the identity of the customer's or the called party's telecommunications service provider.

47 C.F.R. § 51.207 (2003).[32] The only way for a LEC to be relieved of this obligation would be for a rural LEC to obtain relief from its Section 251(b) obligations pursuant to a filing under Section 251(f)(2). In the absence of such relief, the terms "shall permit" and "shall ensure" place clear and unambiguous obligations on the LEC.

1. **The Originating Carrier is Responsible to Transport its Customers' Calls to The Terminating Carrier**

Most ILECs concede that they have local dialing parity obligations, but claim that the transport costs associated with carrying a call to a competitor's network must be borne by the competitor. Usually, the ILEC claims that a CMRS provider must establish and maintain a direct

[32] Unlike in some cases involving CLECs, a wireless carrier establishes local numbers only where it has licenses and facilities that allow it to provide service.

facility into the ILEC switch where the number is rated. This argument is flatly contradictory to the Commission's Rules as interpreted by the federal courts.

As the Commission well knows, the federal scheme for compensation between carriers is one in which the originating carrier – the carrier serving the customer making the call – pays for the cost of that call. <u>In the Matter of Developing a Unified Intercarrier Compensation Regime</u>, CC Docket No. 01-92, Notice Of Proposed Rulemaking, 16 FCC Rcd. 9610, FCC 01-132, ¶ 9 (rel. Apr. 27, 2001). As a result, where parties are directly connected, the originating carrier delivers the call to the terminating carrier, and compensates the terminating carrier (either by payment or provision of in-kind services) for delivering the call to the customer.

It follows that where parties are indirectly connected, the originating carrier must make arrangements for the delivery of its local calls to its competitor's network. When Independent Wireless Carriers' customers originate a local call destined for an ILEC customer, Independent Wireless Carriers deliver the call to the RBOC tandem switch, and pays the RBOC to deliver the call to the ILEC. Independent Wireless Carriers thus take responsibility to ensure the call is delivered to the network of the terminating carrier.

Tandem-routed local traffic simply requires the ILEC to do the same thing that Independent Wireless Carriers are already doing – if the parties are indirectly interconnected, the ILEC must deliver locally-dialed calls to the CMRS Provider at the RBOC tandem. Each party, then, must arrange for the delivery of the calls its own customers have made to the competitor's network.

<u>**2. ILECs Cannot Shift Their Costs to Competitors**</u>

ILEC opposition to tandem routed local calling is based on the flawed proposition that ILECs (or rural ILECs) can shift costs that may be incurred if calls have to be transported beyond an exchange boundary of a network boundary. This argument has no legal support and would undermine local competition.

First, the Commission's Rule 47 C.F.R. § 54.703(b) prohibits an ILEC from shifting the costs of its traffic to its competitors:

> A LEC may not assess charges on any other telecommunications carrier for telecommunications traffic that originates on the LEC's network.

47 C.F.R. § 51.703(b) (2003). Five years ago the Commission interpreted this rule to prohibit an ILEC from requiring a competitor to incur facilities costs used to deliver the ILEC's traffic. In the Matter of TSR Wireless, L.L.C. v. US West Communications, Inc., et al., File Nos. E-98-13, E-98-15, E-98-16, E-98-17, E-98-18, Memorandum Opinion and Order, 15 FCC Rcd 11166, FCC 00-194 (rel. June 21, 2000) ("TSR Wireless"), aff'd, Qwest Corporation v. FCC, 252 F.3d 462 (D.C. Cir. 2001). This principle has been affirmed by two Federal Circuit Courts dealing explicitly with separate rating and routing issues. Mountain Communications, Inc. v. Fed. Communications Comm'n, 355 F.3d 644 (D.C. Cir. 2004) ("Mountain Communications"); MCIMetro Access Transmission Servs., Inc. v. BellSouth Telecomms., Inc., 352 F.3d 872 (4th Cir. 2003) ("MCIMetro"). The primary issue raised in both cases was whether the incumbent carrier whose customer originates a call can pass that cost on to the carrier whose customer receives that call. In each case, the court applied Rule 51.703(b) to prohibit such cost shifting.

In MCIMetro, the incumbent carrier argued that the competitor was responsible to pay the cost of transporting its customer's call outside of the applicable local calling area:

> In arbitration before the NCUC, BellSouth proposed to resolve this perceived inequity by requiring MCI to pay it the incremental cost of transporting traffic destined for MCI's network from the relevant local calling area to the POI. The NCUC adopted Bell-South's proposal and ordered the cost-shifting provision be included in the final interconnection agreement.

MCIMetro, 352 F.3d at 877 (footnote omitted). The Court reversed the state commission's decision, holding that such a cost-shifting provision violated 47 C.F.R. § 51.703(b):

> In sum, we are left with an unambiguous rule, the legality of which is unchallenged, that prohibits the charge that BellSouth seeks to impose. Rule 703(b) is unequivocal in prohibiting LECs from levying charges for traffic originating on their own networks, and, by its own terms, admits of no exceptions. Although we find some surface appeal in BellSouth's suggestion that the charge here is not reciprocal compensation, but rather the permissible shifting of costs attending interconnection, the FCC, as noted above, has endorsed cost-shifting related to interconnection only as it relates to the one-time costs of physical linkage, and in doing so, expressly declined the invitation to extend the definition of "interconnection" to include the transport and termination of traffic.

Id. at 881 (emphasis added).

The D.C. Circuit Court's decision in Mountain Communications provides similar support for the strength of FCC Rule 51.703(b). In that case, Qwest (an ILEC) sought to charge a competitive carrier the cost of transporting calls originated by Qwest. The Commission initially allowed that charge, calling it a "wide area calling service." Mountain Communications, 355 F.3d at 647. The D.C. Circuit reversed, recognizing that Rule 51.703(b) prohibits a local exchange carrier from assessing charges to any other carrier for traffic originated by its own customers. Id. at 648. Based on the clear meaning of the Rule 51.703(b), the court was able to "rather easily conclude that the Commission's decision on this issue [was] arbitrary and capricious." Id. at 649.[33]

[33] In fact, the Commission itself has defended its local number portability decisions by arguing to the federal courts that off-network routing of local numbers is a simple fact of the Commission's interconnection rules. United States Telecom Ass'n, et al. v. Federal Communications Commission, Nos. 03-1414, 03-1443, 2004 WL 3190579 Brief for Federal Communications Commission (Sept. 1, 2004) (footnotes omitted).

3. Three Federal Courts Have Found Tandem-Routed Local Traffic Arrangements between Western Wireless and Rural ILECs to Be Consistent with the Act

Western Wireless has successfully arbitrated its right to establish separate rating and routing points in Oklahoma and in Nebraska. In Oklahoma, rural LECs argued that Western Wireless should be obligated to establish a direct connection in every exchange where it wanted local numbers. The Commission approved Western Wireless' proposed contract language, which ensured that the rural LECs complied with dialing parity obligations and took responsibility for their own traffic:

> CMRS Provider may obtain and Telephone Company will recognize as local all numbers assigned to Telephone Company's rate center; including those which may have a designated LERG [Local Exchange Routing Guide] routing point that is outside the Telephone Company's rate center but within the same LATA [Local Access Transport Area] as the rate center. This subparagraph applies whether Telephone Company and CMRS Provider are directly or indirectly interconnected. If indirectly connected, Telephone Company will deliver those calls to CMRS Provider at the Southwestern Bell LATA tandem.

Atlas II, 309 F.Supp.2d. at 1316. On appeal the Federal District Court affirmed the Oklahoma Commission's ruling, finding that the recent *MCIMetro* and *Mountain* cases "support the Commission's determination that Western Wireless, as a competitive carrier, has the right to establish local numbers in the rate center without maintaining a physical point of connection in that rate center." Atlas II, 309 F.Supp.2d at 1317. The Tenth Circuit Court of Appeals affirmed these rulings and approved the contract language set forth above. Atlas Tel. Co. v. Oklahoma Corporation Comm'n, 400 F.3d 1256, 1268 (10th Cir. 2005).

Western Wireless' request for separate rating and routing points has also been litigated in Nebraska. The Nebraska Commission initially approved arbitrated contract language that authorized the affected ILEC to violate its local dialing parity obligations unless Western Wireless established direct connections to every ILEC exchange where it had local numbers. The United States District Court for the District of Nebraska reversed and ordered that Western Wireless was entitled to establish separate rating and routing points:

> Thus, Great Plains is asked only to treat locally rated Western Wireless calls in the same manner it treats its own locally rated calls. The Court adopts the reasoning of the *Atlas II* court and finds that local dialing parity and tandem routed local calling are consistent with the 1996 Telecommunications Act's general purposes without placing an undue burden on Great Plains.

WWC License, L.L.C. v. Boyle et al., Case No. 4:03CV 3393, Mem. Op., p. 10 (D. Neb. Jan 20, 2005).

All of these cases make it abundantly clear that tandem-routed local calling is consistent with the Commission's rules and necessary to achieve the goals of local competition.

IX. A UNIFIED, COMPETITIVELY-NEUTRAL UNIVERSAL SERVICE REGIME SHOULD BE ADOPTED IN CONJUNCTION WITH INTERCARRIER COMPENSATION REFORM

In this section of the comments, we first discuss the overall principles that should guide universal service reform. Next, we provide an overview and explanation of the specific universal service proposals included in the Western Wireless/SunCom plan. Finally, we compare and contrast the Independent Wireless Carriers' plan with the plans offered by other parties and groups, and demonstrate the superiority of the Independent Wireless Carriers approach over many of the other proposals.

A. Universal Service Reform Must Be Guided by Pro-Competitive Principles

Like all other aspects of intercarrier compensation reform, universal service reform must be guided by pro-competitive, pro-consumer public policy principles – not by mere expediency or by a desire to achieve an elusive “consensus” by accommodating various special interests. In particular, high-cost universal service reform must be targeted to achieve the following goals: (1) advancement of the interest of rural consumers, not the interests of particular groups of carriers; (2) competitive and technological neutrality; and (3) targeting support so as to impose reasonable controls over the future growth of the universal service fund.

First, the Commission must keep in mind that “[t]he purpose of universal service is to benefit the customer, not the carrier.” [34]/ Thus, support mechanisms must be designed and targeted to ensure that consumers throughout the country have access to affordable and comparable services – not to ensure that carriers achieve their earnings targets. The purpose of funding is *not* to guarantee carriers’ recovery of their embedded-cost-based revenue requirements – incumbent and competitive ETCs, like all other companies competing in a capitalist economy, should receive revenues *only* to the extent that they manage to persuade consumers to purchase their product. [35]/ By contrast, the current rural ILEC funding mechanisms, based on rate-of-return regulation (*i.e.*, revenue guarantees) – as well as intercarrier compensation plans that would guarantee “revenue neutrality” to ILECs, but not other carriers – interfere with those carriers’ incentives to meet consumers’ needs. [36]/

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[34]/ Alenco Communications, Inc. v. FCC, 201 F.3d 608, 621 (5th Cir. 2000) (“Alenco”); see also Federal-State Joint Board on Universal Service, Recommended Decision, CC Docket No. 96-45, 19 FCC Rcd 4257, ¶ 57 & n.146 (Fed.-State Joint Bd. 2004) (“Primary Line/ETC Designation RD”).

[35]/ Policymakers must avoid “confus[ing] the requirement of sufficient support for universal service within a market in which telephone service providers compete for customers, which federal law mandates, with a guarantee of economic success for all providers [or for a selected subset of preferred providers], a guarantee that conflicts with competition.” Alenco, 201 F.3d at 625.

[36]/ See Elimination of Rate of Return Regulation of Incumbent Local Exchange Carriers, Western Wireless Petition for Rulemaking, RM-10822 & CC Docket No. 96-45 (filed Oct. 30, 2003) (“WW ROR Petition”) at 20-24; Economics & Technology, Inc., “Lost in Translation: How Rate of Return Regulation Transformed the Universal Service Fund for Consumers into Corporate Welfare for the RLECs,” Appendix A to Western Wireless Reply Comments, RM-10822 & CC Docket No. 96-45 (filed Feb. 13, 2004) (“Lost in Translation”).

Second, as both a legal matter and a public policy matter, universal service programs must be competitively and technologically neutral. In turn, competitive and technological neutrality requires that all funding be disbursed on an explicit and fully portable basis – *i.e.*, all remaining implicit subsidies must be eliminated, and the explicit fund must disburse an identical amount of support per-line or per-consumer connection to all carriers operating in a given geographic area, regardless of what technology they use and whether they are incumbents or competitive entrants. Funding portability is not optional; it is mandated by the Act's requirement that all markets be opened to competitive entry and other specific provisions of the Act, [37]/ as well as by the long-standing Commission recognition that a regulatory system that grants ILECs significantly more per-line support than CETCs would constitute an unlawful barrier to entry. [38]/ "It is difficult to see how a non-portable funding mechanism could be considered competitively neutral" because "a mechanism that offers non-portable support may give ILECs a substantial unfair price advantage in competing for customers." [39]/

Moreover, as the Joint Board recently recognized, "universal service payments should not distort the development of nascent competitive markets. Universal service support should neither

[37]/ "[P]ortability is not only consistent with [the statutory requirement of] predictability, but also is dictated by the principles of competitive neutrality and . . . 47 U.S.C. § 254(e)." Alenco Communications, Inc. v. FCC, 201 F.3d at 622 (emphasis added). See also id. at 616 ("[T]he [universal service] program must treat all market participants equally – for example, subsidies must be portable – so that the market, and not local or federal government regulators, determines who shall compete for and deliver services to customers. Again, this [portability] principle is made necessary not only by the economic realities of competitive markets but also by statute.") (emphasis added); id. at 622 ("What petitioners seek is not merely predictable funding mechanisms, but predictable market outcomes. Indeed, what they wish is protection from competition, the very antithesis of the Act.").

[38]/ See Western Wireless Corp. Petition for Preemption of Statutes and Rules Regarding the Kansas State Universal Service Fund Pursuant to Section 253 of the Communications Act of 1934, 15 FCC Rcd 16227, 16231-32, ¶ 10 (2000) ("Kansas USF Declaratory Ruling").

[39]/ Id.. The Commission also has specifically considered and rejected arguments that portable support based on ILEC costs gives an unfair advantage to competitors. Universal Service First Report and Order, 12 FCC Rcd at 8933, ¶ 289.

incent nor discourage competitive entry."[40]/ A universal service system that, to the extent possible, avoids interfering with competitive market dynamics tends to maximize economic efficiency.[41]/ Only a mechanism that disburses equal amounts of support per customer connection to all carriers can avoid interfering with competitive dynamics, as the Commission has held.[42]/ Explicit and portable support removes an artificial barrier to competition that was imposed by the pre-existing, monopoly-oriented universal service regime.

Finally, universal service support must be targeted so as to avoid excessive and unnecessary funding growth. With a universal service contribution percentage over 11 percent and growing, the Commission cannot afford to consider plans like the ICF plan that give, in essence, a "blank check" to continue guaranteeing rural ILECs' investments without demanding any additional accountability. Instead of trying to maintain all current revenue flows, regardless of how inefficient and potentially excessive they may be, the Commission should take this opportunity to "right-size" the level of funding. In other words, the Commission should take a "bottom-up" approach and determine how much universal service support is needed to ensure adequate and affordable service for consumers in a competitive environment, rather than worrying overmuch about impacts on particular categories of carriers due to the change from the status quo.

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[40]/ Primary Line/ETC Designation RD, ¶ 96.

[41]/ See David E. M. Sappington, "Harnessing Competitive Forces to Foster Economical Universal Service," attached to GCI Comments, CC Docket No. 96-45 (May 5, 2003); Kansas USF Declaratory Ruling, 15 FCC Rcd at 16231, ¶ 8.

[42]/ Kansas USF Declaratory Ruling , 15 FCC Rcd at 16231, ¶ 8. If one carrier experiences lower costs per line and therefore receives less support per line than a competing carrier, then the system effectively would penalize the more efficient carrier – and would give all carriers incentives to operate as inefficiently as possible so as to maximize their costs and their support payments. By contrast, if all eligible carriers in an area receive the same amounts of per-line support (or no support), then each competitor would have natural marketplace incentives to operate as efficiently as possible, and the carrier that is most successful in doing so would be able to exploit the benefits of its efficiency by offering higher-quality services and new technologies, cutting prices for consumers, earning greater margins, or some combination of these benefits. This, of course, is the competitive marketplace's mechanism to give service providers incentives to deliver the highest value to consumers at the lowest price.

B. Independent Wireless Carriers Propose a Pro-Consumer, Competitively-Neutral Universal Service Plan

1. Universal Service Support Should Be Based on the Forward-Looking Costs of the Lowest-Cost Technology

A new high-cost support mechanism based on forward-looking economic costs would be the best way to develop a *unified* system that advances the interests of *consumers* in rural areas and best serves the goals of economic efficiency and competitive neutrality. Working closely with the Joint Board, the Commission should develop a new high-cost support mechanism that would provide funding to all carriers serving rural areas – including large and small ILECs and CETCs – based on a consistent methodology. Since different carriers have incurred different levels of costs in the past, the only way to establish a methodology that is carrier-neutral, but cost-based, is to rely on the forward-looking economic costs of the least-cost technology. The Commission has long recognized, and recently reiterated, that "it is forward-looking costs, not historical costs, that are relevant in setting prices in competitive markets," [43]/ and that "mechanisms incorporating forward-looking economic cost principles would . . . provid[e] more accurate investment signals to potential competitors," [44]/ as well as to incumbents, than mechanisms based on embedded costs.

In particular, the Commission should develop a new methodology for estimating forward-looking costs. This could, as in past modeling exercises, be based on econometric modeling (such as an adjusted version of the Synthesis Model). Forward-looking operating expenses and overhead costs could be estimated using a benchmarking analysis to develop the "best in class"

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[43]/ Review of the Commission's Rules Regarding the Pricing of Unbundled Network Elements and the Resale of Services by Incumbent Local Exchange Carriers, Notice of Proposed Rulemaking, 18 FCC Rcd 18945, ¶ 30 (2003) ("TELRIC NPRM"). See also Verizon Communications, Inc. v. FCC, 535 U.S. 467 (2002) (affirming use of forward-looking costs to set rates for unbundled network elements); Texas OPUC I, 183 F.3d at 411-417 (affirming use of forward-looking costs to calculate universal service support for high-cost areas served by non-rural ILECs).

[44]/ Universal Service First Report and Order, 12 FCC Rcd at 8935-36, ¶ 293.

companies for different size categories of carriers. [45]/ Regardless of which forward-looking methodology is chosen, the forward-looking approach for purposes of determining high-cost support amounts should be calculated, for _all_ carriers, based on the _lesser_ of the forward-looking cost of ILEC network technology, wireless network technology, or other commercially available and viable technologies.

Once the Commission has an analytical methodology in place to determine forward-looking costs for each specified geographic area, the next step is to establish the rules for deriving support amounts. The basic support amount for each geographic unit could be developed based on a simple comparison of the cost of service in each area with a national benchmark (such as the $31 benchmark currently used in determining support for non-rural carriers). Additional funding could be provided to the highest-cost states that have the least ability to generate needed intrastate funding, based on the divergence between the statewide average cost and the national average (like the Model-Based Fund today). Such a methodology would ensure that the most rural areas are eligible for federal universal service funding. [46]/ To ensure that the fund does not

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[45]/ For a discussion of business process benchmarking to identify "best practices" among comparable firms and apply those processes to another firm to improve its performance, see generally Robert C. Camp, Business Process Benchmarking: Finding and Implementing Best Practices (ASQC Quality Press, Milwaukee, WI 1995). See also Lost in Translation at 37-43 (application of benchmarking methodology to identify RLECs that incur inefficient corporate overheads).

[46]/ Cf. Qwest Comments, CC Docket No. 96-45 (10th Circuit Remand Proceeding) (filed April 10, 2002); see also Ex Parte Letter from John W. Kure, Qwest, to Marlene H. Dortch, Secretary, CC Docket No. 96-45 (filed Oct. 1, 2003) (summarizing Qwest's position on the Tenth Circuit remand). While the Commission did not adopt Qwest's proposal in the Tenth Circuit Remand Order, it did not altogether reject it either – the further NPRM mentions the proposal and seeks further comment on related issues. See Tenth Circuit Remand Order FNPRM, ¶ 130 n.420.

Another, similar alternative would be to provide increasing percentages of federal support for geographic locations of increasing cost. For example, the federal fund could provide 25% of the difference between the forward-looking cost and the benchmark average cost for locations with costs that are 135% to 150% of the national average; 50% for locations 150% to 200% of the average; 75% for locations 200% to 250% of the average; and 100% of the difference between the forward-looking cost and the benchmark average cost for locations with costs that are 250% of the national average.

grow excessively in the future, fund growth caps could be incorporated into the methodologies used to determine amounts of support based on forward-looking costs.

2. A Reasonable Transition Plan Could Soften the Impact on the Smallest Rural ILECs

We recognize that we are proposing a significant transformation in the high-cost universal service system, which could have a particularly significant impact on the smallest rural ILECs. Such carriers may need additional time to adjust to the new system. Thus, a somewhat more gradual transition plan should be implemented in the areas served by the smallest rural ILECs (*i.e.*, rural ILECs that, together with all wireline affiliates, serve fewer than 30,000 lines in a state and fewer than 100,000 nationwide). For all other areas, we would propose to phase in the new rules over a four-year transition period; for areas served by small rural ILECs, a six-year transition period should be used. In addition, a "safety net" should be available if a carrier demonstrates, using clear criteria established by the Commission in advance, that it needs additional support to avoid increasing end-user rates to "unaffordable" levels. Such support would be available only for a limited period of time, and should be disbursed on a portable basis to all ETCs in the specified geographic area.

C. The Independent Wireless Carriers' Plan Advances the Public Interest More Effectively than the Other Plans

The universal service components of the Independent Wireless Carriers Plan protect consumers' interests, enhance competition, and promote the public interest goals of the Communications Act far more effectively than universal service components of the ICF Plan or those of the EPG, ARIC/FACTS, and Home/PBT plans (collectively, "Rural ILEC Plans"). The Independent Wireless Carriers' Plan targets funding based on the cost characteristics of each geographic area, without regard to individual carriers' past experiences with collecting access charges or other revenues. By contrast, the ICF Plan as well as the Rural ILEC Plans direct funding to ILECs in a manner that would, at least initially, provide a certain degree of "revenue neutrality" assurance. With regard to rural ILECs, the ICF Plan and each of the Rural ILEC Plans would perpetuate revenue guarantees and funding based on rate-of-return regulation for the indefinite future. Worse, these plans would deny portable support to wireless ETCs.

The elements of these plans designed to guarantee revenue neutrality to ILECs, but not to other carriers, and to perpetuate the monopoly-oriented system of ROR regulation, have no place in an environment of inter-modal competition. While the ILECs would enjoy guaranteed revenues – and rural ILECs would enjoy a guaranteed return on investment on historical costs incurred – their competitors would receive either no funding, or funding limited to a per-line basis for those lines served. Thus, the regulatory system advocated by the ICF and by the rural ILEC groups would impost far greater competitive risk on wireless carriers and other new entrants than on the ILECs – violating competitive neutrality.

Second, as the Commission has repeatedly recognized, revenue guarantees and ROR regulation interfere with incentives for carriers to operate efficiently, deploy new technologies, and reduce their operating costs. In today's increasingly competitive environment, it makes no sense to retain a system that gives carriers incentives to operate inefficiently and discourages them from introducing technological innovations. The ROR system, which rewards carriers for being small and inefficient, also creates artificial and inefficient incentives for RLECs to remain as small as possible, and for larger ILECs to sell exchanges to smaller carriers, even if it would be economically efficient for RLECs to combine or for larger carriers to operate those exchanges.

Third, the revenue guarantees in the ICF and Rural ILEC Plans could lead to uncontrolled growth of the high-cost universal service fund. Such growth threatens the long-term viability of the fund and harms the carriers and consumers across the country who are obligated to pay into it. Moreover, these plans perpetuate the existing rural ILEC universal service funding mechanisms based upon ROR regulation – and given the almost complete lack of independent oversight over the RLECs' cost reporting and legal restrictions on the Commission's ability to require refunds or other remedies if and when it detects ROR over-earnings, such Plans leave the public exposed to serious risks of fraud, waste, and abuse. [47]/

The Commission, of course, has no legal obligation to guarantee any carriers' revenue levels, [48]/ nor to guarantee their competitive success. To the contrary, as discussed above, a universal service system designed to guarantee competitive success of rural ILECs, rather than to promote universal service for the benefit of consumers, likely violates the Act.

Finally, and most significantly, by providing non-portable subsidies to rural ILECs but denying those funds to wireless carriers, the ICF and Rural ILEC Plans effectively would make it impossible for intermodal competitors to compete effectively. The result would be to deprive rural consumers of the opportunity to make their own decisions regarding which carrier to purchase supported universal service from. The Commission should not waste time considering blatantly unlawful and anti-competitive proposals such as the ICF Plan's non-portable "TNRM" fund. By contrast, the Independent Wireless Carriers' Plan provides for a competitively neutral,

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[47]/ See generally WW ROR Petition.

[48]/ See FPC v. Hope Natural Gas Co., 320 U.S. 591, 602, 609 (1944); Duquesne Light Co. v. Barasch, 488 U.S. 299 (1989); Verizon Communications, Inc. v. FCC, 535 U.S. 467, 497-501 (2002) ("Verizon v. FCC") (affirming FCC's use of forward-looking costs as the basis for setting UNE rates); Alenco, 201 F.2d at 620 ("The Act only promises universal service, and that is a goal that requires sufficient funding of customers, not providers. So long as there is sufficient and competitively-neutral funding to enable all customers to receive basic telecommunications services, the FCC has satisfied the Act and is not further required to ensure sufficient funding of every local telephone provider as well.") (emphasis in original).

fully portable funding system, which complies with the Act and ensures that rural consumers enjoy the benefits of intermodal competition.

X. CONCLUSION

Clarity, simplicity, and urgency should be at the foundation of intercarrier compensation reform. Independent Wireless Carriers know from past experience that a lack of specificity breeds uncertainty and contention regarding how reform is to be implemented. Independent Wireless Carriers similarly know that complexity, including technological distinctions and carrier classifications that may once have had merit are, today, undermining telecommunications industry evolution. Any unnecessary complexity embedded in new rules will only serve to compromise future evolution of the telecomunications marketplace. Finally, Independent Wireless Carriers know that this reform is long overdue and that a prolonged decision period followed by a prolonged transition only delays market developments.

Independent Wireless Carriers have provided guidance that is consistent with the intercarrier compensation reform principles articulated by the Commission, and requests that its plan be adopted. The Independent Wireless Carriers' proposal is truly technology and carrier agnostic, as it eliminates arbitrary distinctions in compensation and traffic exchange. The proposal recognizes that intercarrier compensation reform impacts other regulatory programs, including universal service, and proposes a means to extend complementary reform in those domains as well.

Finally, Independent Wireless Carriers' proposal is pro-consumer and consistent with the public interest.

Respectfully submitted,

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